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10/563,406	01/04/2006	David John Edkins	PA281	4558
97338 7590 04/01/2011 James Hardie Technology Limited Europa House Harcourt Centre, Harcourt Centre Dublin, DUBLIN 2 IRELAND				
EXAMINER				
NGUYEN, CHI Q				
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3635				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/563,406

**Applicant(s)**

EDKINS, DAVID JOHN

**Examiner**

CHI NGUYEN

**Art Unit**

3635

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-16 and 23-42 is/are pending in the application.
- 4a) Of the above claim(s) 30-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-16 and 23-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office action is in response to applicant's amendment filed on 12/3/2010.

#### **Status of Claims**

Claims 1-13 and 17-22 have been cancelled.

Claims 30-42 have been withdrawn.

Claims 14-16 and 23-29 are pending and examined.

Upon further consideration, the previously stated allowable claims are being withdrawn and new rejections are following:

#### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rainscreen vent must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: specifically, the claimed limitation such as "a rainscreen vent having a rigid air barrier and a rainscreen panel and a space therebetween, said vent including a first wall adapted for location on or adjacent to said air barrier, a second wall adapted to be located on or adjacent to an internal surface of said rainscreen panel, and a central portion connected between said first and second walls, said central portion having one or more apertures therein allowing liquid to drain from said space and also allowing ingress of air into said space" does not disclose in the specification.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 16 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Regarding claim 16, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

4. In regarding claim 28, lines 5-6; a citation "a rainscreen vent having a rigid air barrier and a rainscreen panel..." is confusing and indefinite because it's unclear that it's the same as "a substantially rigid air barrier...a rainscreen panel" cited in lines 1-2? Clarification is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. As best understood, claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,410,852 to Edgar et al.

7. Edgar et al. disclose in Fig. 1; a rainscreen apparatus including: a substantially rigid air barrier 28 adapted for attachment to a building structure; a rainscreen panel 20 adapted for attachment over the air barrier 28; a spacing member 22 adapted to provide a clearance space between the air barrier 28 and the rainscreen panel 20; a sealing means 29 adapted to provide substantial pressure equalization within the clearance space (col. 5; lines 3-7) and at least one hole 24 for allowing liquid to drain from the space and also allowing ingress of air into the space. (Fig. 1).

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,410,852 to Edgar et al.
3. Claims 14; 15 and 16: Edgar et al. disclose in Fig. 1; a rainscreen apparatus including: a substantially rigid air barrier 28 adapted for attachment to a building structure wherein said rigid air barrier 28 is in the form of at least one sheet said sheet having a relatively rigid reinforcing means 30 is a mesh of fiberglass (col. 4; lines 41-42) attached thereto; a rainscreen panel 20 adapted for attachment over the air barrier 28; a spacing member 22 adapted to provide a clearance space between the air barrier and the rainscreen panel; and sealing means 29 adapted to provide substantial pressure equalization within the clearance space (col. 5; lines 3-7); and the sheet having a relatively rigid reinforcing means including a series of battens 37 laminated to at least one surface of said sheet and surfaces has an adhesive 27 provided thereon.
4. Edgar et al. disclose the basic structures for the rainscreen apparatus as stated but do not disclose expressly the rigid air barrier comprising a thin polymeric or substantially water repellent cellulosic material and having polyolefin material. However, this feature would have been a matter of obvious design choice to one ordinary skill in the art at the time the invention was made to have a different material such as

polymeric, etc. for lightweight and water repellent reasons thus preventing water damage to the building.

5. Claims 23-25 are rejected under 35 U.S.C. 103(a) as being obvious over US Pat. No. 5,410,852 to Edgar et al.

6. Edgar et al. disclose in Fig. 1; a rainscreen apparatus including: a substantially rigid air barrier 28 adapted for attachment to a building structure wherein said rigid air barrier 28 is in the form of at least one sheet said sheet having a relatively rigid reinforcing means 30 is a mesh of fiberglass (col. 4; lines 41-42) attached thereto; a rainscreen panel 20 adapted for attachment over the air barrier 28; a spacing member 22 having a slot 35 that allow air flow (col. 4; lines 49-51) adapted to provide a clearance space between the air barrier and the rainscreen panel; and sealing means 29 adapted to provide substantial pressure equalization within the clearance space (col. 5; lines 3-7); and the sheet having a relatively rigid reinforcing means including a series of battens 37 laminated to at least one surface of said sheet and surfaces has an adhesive 27 provided thereon. Edgar et al. disclose the basic structures for the rainscreen apparatus as stated above but do not disclose expressly the rainscreen apparatus including at least two adjacent substantially rigid air barriers. However, this feature would have been a matter of obvious design choice to one ordinary skill in the art at the time the invention was made to have two rigid air barriers adjacent substantially in order to continuously provide a complete barrier around a building.

7. Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,410,852 to Edgar et al. in view of US Pat. No. 5,230,189 to Sourlis.

8. Edgar et al. disclose in Fig. 1; a rainscreen apparatus including: a substantially rigid air barrier 28 adapted for attachment to a building structure; a rainscreen panel 20 adapted for attachment over the air barrier 28; a spacing member 22 adapted to provide a clearance space between the air barrier 28 and the rainscreen panel 20; a sealing means 29 adapted to provide substantial pressure equalization within the clearance space (col. 5; lines 3-7). Edgar et al. disclose the basic structures for the rainscreen apparatus as stated but do not disclose expressly a rainscreen flashing including a first edge portion adapted to be located on or adjacent to a lower edge of said air barrier a second edge portion adapted to be located on or adjacent to an upper region of said rainscreen panel provided below said air barrier, and a central portion which is contiguous with said first and second edge portions and is provided at a substantially obtuse angle to said first and second edge portions, wherein said central portion slopes downwardly to allow water to drain over said central portion and exterior to said rainscreen panel. Sourlis discloses a mortar and debris collection device that including a flashing 20 is made out of sheet of vinyl or metal (see col. 4; lines 27-29) and positioned adjacent to a wall (Fig. 1). In view of sourlis, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Edgar et al. a rainscreen flashing located adjacent to the air barrier at an obtuse angle in order to drain out water from the wall.

9. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,410,852 to Edgar et al. in view of US Pat. No. 6,401,394 to Nozaki.



10. Edgar et al. disclose in Fig. 1; a rainscreen apparatus including: a substantially rigid air barrier 28 adapted for attachment to a building structure wherein said rigid air barrier 28 is in the form of at least one sheet said sheet having a relatively rigid reinforcing means 30 is a mesh of fiberglass (col. 4; lines 41-42) attached thereto; a rainscreen panel 20 adapted for attachment over the air barrier 28; a spacing member 22 adapted to provide a clearance space between the air barrier and the rainscreen panel; and sealing means 29 adapted to provide substantial pressure equalization within the clearance space (col. 5; lines 3-7); and the sheet having a relatively rigid reinforcing means including a series of battens 37 laminated to at least one surface of said sheet and surfaces has an adhesive 27 provided thereon; a sealing member 36. Edgar et al. disclose the basic structures for the rainscreen apparatus as stated and further including a sealing member 36, but the sealing member 36 does not have at least two lips projecting from a base, the lips being spaced from each other. Nozaki discloses a sealing member 5A, having a base 51, at least two lips 52/53 projecting from the base and being spaced to each other (see Fig. 1). In view of Nozaki, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the Edgar et al. sealing member having a base and two lips projecting from the base and being spaced to each other in order to hold and support the rainscreen panel within the projecting lips and the sides of the projecting lips being contacted with the panel surface thus preventing air lost through join cavity.

***Response to Arguments***

11. Applicant's arguments with respect to claims 14-16 and 23-29 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

***Contact Information***

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272- 6847. The examiner can normally be reached on Monday-Friday from 7:30 am-4:00 pm. If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached at (571) 272-6928. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

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Examiner, Art Unit 3635